UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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TOMAS VASCONCELO,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER JAMES BAEZ (Shield no. 12154), POLICE OFFICER SEAN SPENCER (Shield no. 4482),

Defendants.

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ECF CASE

FIRST AMENDED COMPLAINT

06 CV 1188 (JGK) (THK)

Jury Trial Demanded

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the violation of his rights secured by 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York. The case arises from a December 21, 2005 incident in which members of the New York City Police Department ("NYPD") subjected plaintiff to false arrest, excessive force, and assault and battery. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorneys' fees, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide his state law claims of false arrest and assault and battery. With respect to these state law claims, a notice of claim was duly filed on the City of New York

within 90 days of the incident in question, more than 30 days have elapsed since such filing, and the City has refused to settle plaintiff's state law claims. These state law claims are timely because this action was filed within one year and 90 days of the incident at issue in this lawsuit.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Southern District of New York. Moreover, venue is proper pursuant to 28 U.S.C. § 1391(b) because the City of New York's deliberate indifference to plaintiff's federally protected rights took place in this district, specifically at NYPD Headquarters located at One Police Plaza, and at the office of the Civilian Complaint Review Board located at 40 Rector Street.

PARTIES

5. Plaintiff is a resident of the State of New York, County of Kings.

6. The City of New York is a municipal corporation organized under the laws of the State of New York.

7. Police Officer James Baez is a member of the NYPD who was assigned to the 72nd Precinct on December 21, 2005. Baez is sued in his individual and official capacity.

8. Police Officer Sean R. Spencer is a member of the NYPD who was assigned to the 72nd Precinct on December 21, 2005. Doe is sued in his individual and official capacity.

STATEMENT OF FACTS

9. On December 21, 2005, at approximately 8:00 p.m., on the 4th floor of 5302 Sixth Avenue, Brooklyn, New York, Police Officers James Baez and Sean Spencer arrested claimant without cause.

10. In the course of arresting plaintiff, Officers Baez and Spencer, acting in concert, subjected the unresisting plaintiff to excessive force and assault and battery by throwing plaintiff to the ground, kicking plaintiff throughout his body, striking plaintiff in his face, choking plaintiff, and handcuffing plaintiff excessively tight leaving red marks on plaintiff's wrists.

11. After beating plaintiff, the officers took plaintiff to Lutheran Hospital for medical treatment.

12. At the hospital, the officers handcuffed plaintiff to his bed and guarded him at all times.

13. On December 22, 2005, at approximately 6:00 a.m., plaintiff was discharged from Lutheran Hospital and from the custody of the NYPD.

14. Officers Baez and Spencer did not file charges against plaintiff.

15. As a result of defendants' actions, plaintiff experienced physical injuries, including hearing loss, emotional distress, fear, embarrassment, humiliation, discomfort, pain and suffering, and loss of liberty.

FEDERAL AND STATE LAW CLAIMS AGAINST POLICE OFFICERS JAMES BAEZ AND SEAN SPENCER

16. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-15 as if fully set forth herein.

17. The conduct of Police Officers James Baez and Sean Spencer, as described herein, amounted to false arrest, excessive force, and assault and battery. This conduct violated plaintiff's rights under 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York

FEDERAL AND STATE LAW CLAIMS AGAINST THE CITY OF NEW YORK

18. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-17 as if fully set forth herein.

19. The City of New York directly caused the constitutional violations suffered by plaintiff.

20. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the NYPD and the Civilian Complaint Review Board, and from the NYPD's own observations, that the individual defendants are unfit, ill-tempered police officers who have the propensity to commit the acts alleged herein.

21. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor the officers and improperly retained and utilized them. Moreover, the City of New York failed to adequately investigate prior complaints against the officers.

22. The aforesaid conduct by the City of New York violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

23. Moreover, because the individual defendants were acting within the scope of their employment as members of the NYPD during the incident in question, the City of New York is vicariously liable under state law for the false arrest and assault and battery of plaintiff.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

a. Compensatory damages in an amount to be determined by a jury;

b. Punitive damages in an amount to be determined by a jury;

c. Costs, interest and attorney's fees;

d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: May 19, 2006
Brooklyn, New York

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By:

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RICHARD J. CARDINALE (RC-8507)